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New rules on insolvency

On 2 October 2018, the Government Emergency Ordinance no. 88/2018 amending the insolvency legislation was published in the Official Gazette of Romania ("GEO 88/2018"), primarily aimed at making the recovery of state receivables from insolvent companies more efficient.

The key changes brought by GEO 88/2018 are:

- Debtors are no longer allowed to petition for their insolvency if more than 50% of their total debt consists of state debts. Also, in order to give the tax authority more time to analyse the debtor's financial situation, the debtor petition for insolvency is rejected if the debtor has not informed in advance the tax authority with regard to its intention to open the insolvency.
- Tax claims arising from a challenged administrative act for which enforcement was not suspended by a final court decision will be included in the table of claims, under condition, until the court challenge in relation to such administrative act is finalised.
- GEO 88/2018 removes the ban on debt to equity swaps in cases of state receivables. Previously, debt to equity swaps were only allowed for private creditors, but under the new legislation, the reorganisation plan can provide the conversion of state receivables into shares, in certain conditions - this will enable the Romanian State to become shareholder in companies previously owned only by private entities.
- Unsecured state receivables may be reduced, in certain conditions, if such reduction is provided in the reorganisation plan.
- The judicial administrator and the judicial liquidator are now required to file a liability claim against persons responsible for the insolvency of the debtor, every time they identify such persons - previously, they were able to decide the opportunity of filing such claim.
- Liability claims against persons responsible for the insolvency of the debtor may now also be filed by each creditor holding at least 30% of the total receivables registered in the table of claims (the previous threshold was 50%). In addition, such creditor may challenge court decisions rejecting liability claims, if no creditors' committee is settled.
- Creditors can no longer be designated as debtors' special administrators. Further, judicial administrators cannot appoint as specialists within the insolvency proceedings affiliates or persons raising issues related to conflict of interest with the judicial administrator, the judicial liquidator, the debtor or any of the creditors.
- The judicial administrator should analyse payment claims relating to receivables born after the opening of the insolvency proceedings in 10 days from filing such claims (previously there was no deadline), otherwise the creditor holding receivables may request the opening of bankruptcy proceedings against the debtor if their receivables are not paid within 60 days from filing their claim.
- Requests filed by creditors to open the bankruptcy proceedings against the debtor should be ruled upon by the court in 30 days (previously there was no deadline).



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